PIPER & MARBURY
L.L.P.
1200 NINETEENTH STREET, N.W.
WASHINGTON, D.C. 20036-2430
202-861-3900
FAX: 202-223-2085

BALTIMORE
NEW YORK
PHILADELPHIA
EASTON

WRITER'S DIRECT NUMBER
202-861-6452
FAX: 202-223-2085
vschlesinger@pipermar.com

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July 1, 1996

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Federal Communications Commission
Office of Secretary

VIA HAND DELIVERY

Mr. William F. Caton
Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Re: In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128

Dear Mr. Caton:

Enclosed herewith for filing is an original and ten (10) copies of comments submitted by One Call Communications, Inc. d/b/a Opticom Communications, Inc. in the above-referenced proceeding. In addition, please note that two (2) copies of the aforementioned comments and a computer diskette containing an electronic version of such comments are being submitted directly to the Common Carrier Bureau in accordance with the Commission's instructions.

Please acknowledge receipt on the supplemental copy provided and remit same to the bearer.

Sincerely,

Victoria A. Schlesinger

Enclosures

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JUL - 1 1996

Federal Communications Commission
Office of Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the	)	
Pay Telephone Reclassification	)	CC Docket No. 96-128
and Compensation Provisions of	)	
the Telecommunications Act of 1996	)	

COMMENTS OF ONE CALL COMMUNICATIONS, INC. d/b/a OPTICOM

One Call Communications, Inc.
801 Congressional Boulevard
Carmel, Indiana 46032
(317) 580-7276

Date: July 1, 1996

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COMMENTS OF ONE CALL COMMUNICATIONS, INC. d/b/a OPTICOM

Pursuant to Section 1.415 of the Commission's Rules, One Call Communications, Inc. d/b/a Opticom (hereinafter "Opticom"), by its attorney, hereby submits the following comments in the above-referenced proceeding.[1]

I. INTRODUCTION AND SUMMARY

On June 6, 1996, the Commission released a Notice of Proposed Rulemaking (hereinafter "Payphone Notice") soliciting comments on proposed rules implementing Section 276 of the Telecommunications Act of 1996 (hereinafter "1996 Telecom Act").[2]

Opticom agrees with the Commission's conclusion that Section 276 requires it to prescribe compensation only in those situations where adequate compensation is not already provided since such a conclusion is consistent with the Congressional intent underlying that

[1] Opticom is an interexchange carrier providing tariffed intrastate, interstate and international 0+ operator services throughout the United States and abroad.

[2] 47 U.S.C. § 276 (as amended) (directing the Commission "to establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone....").

section. In those situations where compensation must be prescribed, Opticom urges the Commission to acknowledge the potential for abuse of the per call compensation scheme and to consider the ways in which these abuses may be avoided. Opticom disagrees, however, with the Commission's tentative conclusion that the "carrier-pays" method is in the public interest. Opticom continues to support the view that the caller, as the cost causative user, should bear ultimate responsibility for the compensation of payphone service providers ("PSPs"), including compensation for 800 subscriber calls. Moreover, Opticom agrees that common carrier line ("CCL") charges should be reduced, but is concerned over the manner in which incumbent LECs may seek to recover these costs via other means. Thus, Opticom also supports the adoption of competitive safeguards for payphone services in order to prevent incumbent LECs from engaging in discriminatory and anticompetitive conduct.

II. COMPENSATION FOR EACH AND EVERY COMPLETED INTRASTATE AND INTERSTATE CALL ORIGINATED BY PAYPHONES

A. Scope of Payphone Calls Covered

1. The provision of "fair compensation"

Section 276 of the 1996 Telecom Act requires the Commission to ensure that PSPs receive fair compensation for each completed interstate and intrastate call originating at their pay telephones.[3] Accordingly, the Commission is seeking comment on the intended definition of "fair compensation" and the methods by which the Commission should ensure such compensation.[4]

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[3] 47 U.S.C. § 276 (b)(1)(A).

[4] In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, *Notice of Proposed Rulemaking*, CC Docket No. 96-128, released June 6, 1996.

In its Payphone Notice, the Commission tentatively concludes that it should maintain the current individual compensation scheme for presubscribed 0+ calls and "use this mandate to prescribe compensation only when payphone providers are not already 'fairly compensated.'"[5] The Commission reasoned that existing competition in this area was sufficient to ensure fair compensation for such calls in accordance with Section 276 of the Act.[6]

Opticom agrees with the Commission's conclusion that the current level of competition for presubscribed 0+ calls already provides "fair compensation" as required by Section 276. As the Commission stated in its Payphone Notice, the issue of "fair compensation" arises only in dial-around situations since the contracts between the PSPs and the presubscribed IXCs typically include payments to the PSPs that, as the result of contractual negotiations, provide compensation.[7]

Additionally, the Commission's conclusion is consistent with the legislative history of Section 276 and the overall goal of promoting healthy competition in the payphone marketplace. In adopting Section 276, Congress sought to eliminate the existing "dual regulatory regime" resulting from the development of payphone competition,[8] in particular, the incentive and opportunity for discrimination and cross-subsidization with regard to payphone services.[9] The intent of Congress, therefore, was to provide a "more evenhanded competitive [payphone] environment"[10] through a more equitable regulatory approach.

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[5] Payphone Notice, ¶ 16.

[6] *Id.*

[7] *Id.* ¶ 16 & n. 54.

[8] *See* S. Rep. No. 23, 104th Cong., 1st Sess. (1995) 57.

[9] *See id.*

[10] *Id.* at 58.

The legislative history supports the Commission's conclusion, therefore, that Congress did not enact Section 276 to overhaul every aspect of payphone compensation, but rather to provide compensation in situations only where payphone owners were not adequately compensated under the existing regulatory regime. Thus, Opticom supports the Commission's proposal to forebear from prescribing per call compensation for presubscribed 0+ calls. Not only does competition ensure fair compensation, but a change in the current compensation scheme for 0+ calls is neither necessary nor consistent with the legislative history accompanying Section 276.

Opticom also agrees with the Commission's tentative conclusion regarding compensation for international calls originating at payphones.[11] As the Commission noted in its Payphone Notice, "the costs of originating [international] calls are similar to the costs of originating 'each and every completed intrastate and interstate call.'"[12] Because Section 276 directs the Commission to prescribe compensation in those situations where the current compensation mechanism is inadequate, Opticom supports the Commission's proposal to compensate PSPs for their costs in originating international calls from their payphones not handled by their presubscribed carrier.

2. Potential abuse of a per call compensation scheme for subscriber 800 calls

Much like the Commission, Opticom is extremely concerned about the potential for autodialer abuse in connection with per call compensation for subscriber 800 calls.[13] Opticom, along with most industry participants, is well aware of the financial windfall that may result from the use of autodialers if a per call compensation mechanism is instituted. Opticom proposes that

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[11] Payphone Notice, ¶ 18.

[12] *Id.* (quoting 47 U.S.C. § 276(b)(1)(A)).

[13] *Id.* ¶ 23.

the Commission require a caller placing a subscriber 800 call to pay a local rate via a coin deposit.[14] Although such a solution appears burdensome at first blush, the Commission must weigh it against the effect autodialer abuse would ultimately have on the consumer.

B. Entities Required to Pay Compensation

Opticom disagrees with the Commission's tentative conclusion that the "carrier-pays" system would serve the public interest more so than the "set use fee" system.[15] The fact that the Commission rejected the "set use fee" system years ago should not be dispositive.[16] As the Commission has acknowledged the 1996 Telecom Act's requirement that a new compensation scheme be devised is sufficient cause for it to reexamine a "set use fee" system for payphone end users.[17] Moreover, the changes in the telecommunications marketplace justify a change in the payphone compensation system.

The Commission reasons that the "carrier-pays" method would minimize transaction costs on the caller and on the industry.[18] Adoption of the "carrier-pays" method, however, would actually increase transaction costs because IXCs will pass these charges on to the end user. Consequently, the transaction costs that are avoided at the front-end of the call will be added at the back-end, resulting in a combination of both the "carrier-pays" and "set use fee"

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[14]Opticom is aware that Section 226(e)(2) of The Telephone Operator Consumer Services Improvement Act of 1990 disallows compensation in the form of advance payments by consumers for calls "routed to providers of operator services that are other than the presubscribed provider of operator services." 47 U.S.C. § 226(e)(2). Nevertheless, the Commission finds itself in a position where the only practical means by which to avoid abuse of the per call compensation mechanism is to provide compensation via a coin deposit.

[15]Payphone Notice, ¶ 28.

[16]*Id.* ¶ 27.

[17]*Id.* ¶ 27.

[18]*Id.* ¶ 28.

systems. Any benefits to be gained by use of the "carrier-pays" system would thereby be negated by its practical effects. Moreover, a "carrier-pays" system is contrary to the Commission's fundamental policy that costs should be recovered from the cost causer.[19]

Under the Commission's proposed plan, an 800 subscriber would be required to pay the additional compensation amount for a call originating from a payphone, whereas a call from any other location would not incur any additional cost. As the initiator of the call, end users are more in control of where such calls are originated rather than the 800 subscriber. A coin deposit would be a reasonable solution to ensure fair compensation.[20]

C. Ability of Carriers to Track Calls From Payphones

The Commission is also seeking comment on the use of tracking surrogates to determine the number of completed calls originating at each payphone.[21] In its Second Report and Order, the Commission acknowledged that call tracking surrogates were often inaccurate and unreliable.[22] The Commission reasoned that, although a per call compensation mechanism was preferable, it was not technologically feasible to accurately track calls originating at

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[19]*See* In the Matter of National Security Emergency Preparedness Telecommunications Service Priority System, Notice of Proposed Rulemaking, 2 FCC Rcd. 7124, 7128 (1987) (stating that it is the Commission's "fundamental policy...that costs be assigned to the cost causative [sic] user, not the general ratepayer.").

[20]Not only would a coin deposit ensure fair compensation, but it would also eliminate the potential for fraudulent abuse of 800 and other toll free numbers by payphone owners. *See* Payphone Notice, ¶ 23 and *supra* note 14.

[21]Payphone Notice, ¶ 30.

[22]*See* Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, *Second Report and Order*, 7 FCC Rcd. 3251, 3253 (1992).

payphones.[23] Consequently, the Commission adopted a flat-rate per-phone compensation scheme.[24]

Although the Commission's Second Report and Order was issued in 1992, Opticom has evidence to suggest that call tracking surrogates continue to produce inaccurate results[25] but are no longer necessary to track calls.[26] Accurate tracking methods now exist and continue to be used by most IXCs. For instance, IXCs have the ability to track the terminated calls on a per call basis. In order to use such a tracking method, however, IXCs must be supplied with all of the payphone ANIs that are to be compensated and not just those belonging to private payphones.[27] Opticom, therefore, does not support the use of any call tracking surrogate for determining a carrier's compensation obligations.

D. Administration of Per Call Compensation

Opticom supports the Commission's tentative conclusion that regulatory guidelines should be adopted for the resolution of disputed ANIs under the per call compensation scheme.[28] Basic guidelines, such as those proposed by the Commission,[29] would avoid unnecessary ANI

[23] *Id.* at 3252-53.

[24] *Id.* at 3253.

[25] For example, Opticom has compiled statistical results which illustrate that, when Ameritech used a tracking surrogate of 25 seconds to determine whether a call was completed, it recorded a 75% error record. *See e.g.*, Attachment 1.

[26] *See* Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, *Memorandum Opinion and Order on Further Reconsideration and Second Further Notice of Proposed Rulemaking*, 10 FCC Rcd. 11457, 11466 (1995) (stating that IXCs now have adequate tracking capability).

[27] The tracking method proposed by Opticom is similar to that currently used by AT&T and Sprint to track access code calls from private payphones. Payphone Notice, ¶ 29.

[28] *Id.* ¶ 34.

[29] *Id.*

disputes through data verification requirements and compensation payment procedures. These procedures would facilitate administrative efficiency and avoid unnecessary delays in the collection of compensation.

E. Per Call Compensation Amount

In determining the appropriate cost-based surrogates, Opticom supports the use of a flat rate approximating the local rate for fair compensation for PSPs.[30] When a PSP places a payphone, the expectation is that the PSP is willing to allow the use of its equipment in return for receiving the local coin rate. Therefore, the local coin rate is a reasonable surrogate for "fair compensation."[31]

With respect to the need for interim compensation measures for PPOs, Opticom does not believe that such measures will be necessary. Given the short time frame within which the Commission must implement final rules,[32] establishing appropriate interim measures would be duplicative and unnecessary. By the time interim measures were adopted, in effect, and implemented, the Commission would have developed permanent rules. It would be economically and administratively easier for the Commission to develop permanent compensation measures.

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[30] *Id.* ¶ 38.

[31] In determining the compensation amount for subscriber 800 calls, the Commission should consider the possibility of using the local rate for the coin deposit.

[32] 47 U.S.C. § 276(b)(1).

III. RECLASSIFICATION OF LEC OWNED PAYPHONES

A. Termination of Access Charge Compensation and Other Subsidies

Opticom agrees with the Commission's tentative conclusion that common carrier line ("CCL") charges should be reduced in order to eliminate subsidies.[33] Specifically, incumbent LECs should be required to exclude from their intrastate and interstate rate structures any charges designed to recover payphone costs. In this manner, the Commission will ensure that all payphone subsidies are removed from basic exchange and exchange access revenues and, in the process, ensure that costs are paid by the cost causer.

Opticom is leery, however, of the manner in which incumbent LECs may seek to recover payphone costs through other means. Because of the incumbent LECs' potential for manipulating other accounts or rate structures,[34] Opticom doubts that any reduction in the CCL charges would be a real, lasting reduction. Thus, the Commission and state regulatory bodies must be diligent in its efforts to ensure that the LECs move from subsidized compensation to per call compensation. Requiring LECs to identify in their comments all accounts that contain costs attributable to their payphone operations will facilitate the Commission's goal of monitoring and limiting the ability of incumbent LECs' to reinstate the subsidies the Telecom Act sought to eliminate.[35]

B. Nonstructural Safeguards for BOC Provision of Payphone Service

As to the issue of nonstructural safeguards, Opticom supports the Commission's tentative conclusion that all of the nonstructural safeguards enunciated in Computer III must be applied

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[33] Payphone Notice, ¶ 51.

[34] In Indiana, for example, Ameritech recently petitioned the Indiana Utility Regulatory Commission to increase its CCL charges by 20%.

[35] Payphone Notice, ¶ 51.

under the Telecom Act, including restrictions on the use of Customer Proprietary Network Information ("CPNI").[36] In order to prevent BOCs from preferring or discriminating in favor of their own payphone service, the full panoply of nondiscrimination requirements should apply.

To the extent, however, that the Commission decides not to restrict the use of CPNI, Opticom asserts that all providers should be allowed access to this data. Because of the incumbent LECs' dominance over local service in their exchange territories, they are afforded the competitive advantage of advanced notice of <u>every</u> profitable and nonprofitable location. This information gives the LECs an incredible market advantage. Indeed, and based on Opticom's experience, when a profitable private payphone location is discovered, a LEC-owned payphone appears in the immediate vicinity shortly thereafter.

C. <u>Ability of BOCs to Negotiate with Location Providers on the Presubscribed InterLATA Carriers</u>

The Commission is also seeking comment on the implementation of Section 276 (b)(1)(D) which directs the Commission to afford the BOCs the ability to negotiate with location providers on the selection of a presubscribed interLATA carrier unless the Commission determines that such activity is not in the public interest.[37] Opticom raises no objections to the Commission's proposal to provide the BOCs with the same contractual opportunities to negotiate and contract with location providers so long as the Commission sustains the location provider's ultimate authority to select the presubscribed carrier. Because of the obvious opportunity for discriminatory conduct, Opticom has serious reservations about permitting BOCs to select themselves as the interLATA carrier.[38] Consequently, Opticom would adamantly oppose any proposal that permits the BOCs to select the presubscribed interexchange carrier. Specifically, Opticom is concerned about the absence of competitive safeguards in the negotiation process.[39]

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[36] *Id.* ¶ 58.

Opticom, therefore, would urge the Commission to consider the adoption of competitive safeguards regarding selection procedures so that competition is not slanted towards the BOCs.

As an alternative means by which to avoid discrimination and favoritism by the BOCs, the Commission could establish a new selection mechanism. Opticom proposes that interLATA presubscribed interexchange carriers be selected through a database similar to the SMS entity used for 800 numbers. It is Opticom's opinion that the technology presently exists to affect such a change in the selection method. By creating a separate entity, the Commission could avoid any possibility of favoritism.

D. Ability of Payphone Service Providers to Negotiate with Location Providers on the Presubscribed IntraLATA Carrier

The Commission is also seeking comment on its proposals regarding the implementation of Section 276(b)(1)(E) which speaks to the issue of intraLATA presubscription.[40] In its Notice, the Commission concluded that all PSPs should have that ability to negotiate with location providers for intraLATA presubscription. Opticom believes that the presubscription process regarding the carriage of intraLATA payphone traffic is valid so long as the decision remains with the location provider.[41]

(Footnote continued from previous page)

[37] *Id.* ¶¶ 71-72.

[38] Previously, Opticom has experienced some difficulty in dealing with the BOCs when Opticom PICs an ANI.

[39] Certainly, the BOCs will take advantage of a situation in which they are able to direct payphone service to themselves. *Id.* ¶ 72.

[40] *Id.* ¶¶ 74-75.

[41] Concern would arise, however, if undue pressure was placed on the location providers by the BOCs to select a specific carrier. *See supra* p. 11 (discussing the selection process and responsible parties).

IV. CONCLUSION

For the foregoing reasons, Opticom respectfully submits the aforementioned proposals regarding the implementation of Section 276 of the Telecom Act to effectuate pay telephone reclassification, and to develop additional compensation regulations and competitive safeguards.

Respectfully submitted,

One Call Communications, Inc. d/b/a Opticom

Ann Cassidy, Esq.

One Call Communications, Inc.
801 Congressional Blvd.
Carmel, Indiana 46032
(317) 580-7276

DATE: July 1, 1996

Attachment #1

Opticom May 1996

	Calls	% of Total
Calls Offered	3,803,240	100.00%
"Completed" Calls	1,938,893	50.98%
Incomplete Calls	1,864,347	49.02%

Incomplete Calls > 25 seconds 1,373,460

Percent Call Tracking surrogate returns FALSE completion 73.67%
1,373,460/1,864,347